

1 ALLEN & OVERY LLP
Michael S. Feldberg (*pro hac vice*)
2 John Roberti (*pro hac vice*)
Andrew Rhys Davies (*pro hac vice*)
3 1221 Avenue of the Americas
4 New York, NY 10020
Telephone: (212) 610-6300
5 Facsimile: (212) 610-6399
Email: michael.feldberg@allenoverly.com
6 john.roberti@allenoverly.com
7 andrewrhys.davies@allenoverly.com

8 *Attorneys for Defendants Samsung SDI Co., Ltd.;*
Samsung SDI America, Inc.; Samsung SDI Mexico S.A.
9 *De C.V.; Samsung SDI Brasil Ltda.; Shenzhen Samsung*
10 *SDI Co., Ltd.; Tianjin Samsung SDI Co., Ltd.; and*
Samsung SDI (Malaysia) Sdn. Bhd.

11 [Additional Responding Parties and Counsel Listed on Signature Page]

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 SAN FRANCISCO DIVISION

15 IN RE: CATHODE RAY TUBE (CRT)
16 ANTITRUST LITIGATION

Case No.: 07-cv-05944 JST

MDL No. 1917

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18 This document relates to:

19 ALL INDIRECT PURCHASER ACTIONS
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**DEFENDANTS' NOTICE OF FILING
PROPOSED ORDER ON MOTION TO
VACATE OR CLARIFY 2010
STIPULATION AND ORDER**

1 Further to the argument on June 6, 2019, Defendants hereby file their proposed order on
2 the Motion to Vacate or Clarify 2010 Stipulation and Order (ECF No. 5469). Defendants and
3 movants have met and conferred, and have been unable to agree on a form of order to propose
4 jointly to the Court.

5 Defendants submit this proposed order recognizing that the Court has rejected their
6 arguments in opposition to the motion to vacate or clarify, as set forth in Defendants' opposition
7 (ECF No. 5484) and at argument on June 6, 2019. The proposed order is respectfully submitted
8 subject to those arguments.
9

10 Defendants also respectfully request that the Court consider the Defendants' request
11 made at argument on June 6, 2019 to deny the motion without prejudice to renewal if and when
12 an actual, concrete dispute arises between the parties as to whether the 2010 Stipulation and
13 Order prevents the assertion of any claim.
14

15 If, consistent with the Court's tentative ruling, the Court enters an order granting the
16 motion at this stage, Defendants' proposal to vacate Paragraph 5 of the 2010 Stipulation and
17 Order prospectively achieves the objective that movants have articulated, *i.e.* to ensure that it
18 does not prevent the future assertion of claims.

19 Unlike movants' proposed order (ECF No. 5469-1), Defendants' proposal avoids the
20 confusion that was evident at argument on June 6, 2019 about the potential effect of vacating the
21 2010 Stipulation and Order in its entirety. In particular, Defendants' proposed order avoids any
22 argument that the Court is vacating the dismissal of state-law damages claims that certain
23 putative class representatives asserted in the Second Amended Complaint, and that were
24 dismissed by the Special Master's September 2010 report and recommendation (ECF No. 768) as
25 adopted in the 2010 Stipulation (ECF No. 799, ¶¶ 1-4). Those dismissed claims include the
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individual state-law damages claims asserted by the former putative representative from Arkansas (Jerry Cook), *see* ECF No. 768, at 3-4, and from Massachusetts (Barbara Caldwell), *see id.* at 8, 12-14, and the damages claims asserted under Montana law in the absence of any putative class representative from that State, *see id.* at 4-5.

Although Defendants recognize that the Court has rejected their rule-of-mandate argument as a general matter, the “good cause” standard that governs a district court’s inherent power to vacate its own interlocutory order does not authorize the Court to vacate its prior dismissal of claims.¹ Insofar as the 2010 Stipulation and Order dismissed claims, it is not interlocutory because it merged into the July 2016 final judgment. *See Indep. Living Ctr. of S. California, Inc. v. Kent*, 909 F.3d 272, 285 (9th Cir. 2018) (citing *Am. Ironworks & Erectors, Inc. v. N. Am. Constr. Corp.*, 248 F.3d 892, 897 (9th Cir. 2001)). And because this matter is before the Court on remand, this Court cannot “revisit its already final determinations unless the mandate allowed it.” *United States v. Thrasher*, 483 F.3d 977, 981-82 (9th Cir. 2007) (quotation marks omitted). The mandate does not authorize this Court to revisit the dismissals effected by the 2010 Stipulation and Order. To the contrary, as none of the plaintiffs whose claims were dismissed by the 2010 Stipulation and Order filed appeals, the Ninth Circuit could not have reversed those dismissals. *See Le v. Astrue*, 558 F.3d 1019, 1022 (9th Cir. 2009) (party’s failure to file a notice of appeal “creates a jurisdictional bar”).

Defendants respectfully request the opportunity to be heard before the Court enters any order differing from Defendants’ proposal.

¹ In *City of Los Angeles, Harbor Division v. Santa Monica Baykeeper*, 254 F.3d 882 (9th Cir. 2001), the district court was permitted to rescind its order certifying an appeal under 28 U.S.C. § 1292(b) for “good cause” precisely because that order remained interlocutory, as the district court acted before the Ninth Circuit accepted the certified interlocutory appeal. *See id.* at 885-86.

1 Dated: June 14, 2019

Respectfully submitted,

2
3 /s/ Andrew Rhys Davies

4 ALLEN & OVERY LLP

MICHAEL S. FELDBERG

michael.feldberg@allenovery.com

5 ANDREW RHYS DAVIES

andrewrhys.davies@allenovery.com

6 1221 Avenue of the Americas

7 New York, NY 10020

Telephone: (212) 610-6300

8 Facsimile: (212) 610-6399

9 JOHN ROBERTI

john.roberti@allenovery.com

10 ALLEN & OVERY LLP

11 1101 New York Avenue NW

Washington, DC 20005

12 Telephone: (202) 683-3800

13 Facsimile: (212) 610-6399

14 *Attorneys for Defendants Samsung SDI Co., Ltd.;*
15 *Samsung SDI America, Inc.; Samsung SDI Mexico*
16 *S.A. De C.V.; Samsung SDI Brasil Ltda.; Shenzhen*
17 *Samsung SDI Co., Ltd.; Tianjin Samsung SDI Co.,*
18 *Ltd.; and Samsung SDI (Malaysia) Sdn. Bhd.*

1 /s/ Jeffrey L. Kessler

2 WINSTON & STRAWN LLP

3 JEFFREY L. KESSLER

4 jkessler@winston.com

5 EVA W. COLE

6 ewcole@winston.com

7 200 Park Avenue

8 New York, NY 10166

9 Telephone: (212) 294-6700

10 Facsimile: (212) 294-4700

11 KEVIN B. GOLDSTEIN

12 kbgoldstein@winston.com

13 35 W. Wacker Drive

14 Chicago, IL 60622

15 Telephone: (312) 558-5600

16 Facsimile: (312) 558-5700

17 WEIL, GOTSHAL & MANGES LLP

18 DAVID L. YOHAI

19 david.yohai@weil.com

20 ADAM C. HEMLOCK

21 adam.hemlock@weil.com

22 DAVID YOLKUT

23 david.yolkut@weil.com

24 767 Fifth Avenue

25 New York, NY 10153-0119

26 Telephone: (212) 310-8000

27 Facsimile: (212) 310-8007

*Attorneys for Defendants Panasonic Corporation
(f/k/a Matsushita Electric Industrial Co., Ltd.), and
MT Picture Display Co., Ltd.*

1 /s/ John M. Taladay

2 BAKER BOTTS LLP
3 JOHN M. TALADAY
4 ERIK T. KOONS
5 1299 Pennsylvania Avenue, NW
6 Washington, DC 20004-2400
7 202.639.7700
8 202.639.7890 (fax)
9 Email: john.taladay@bakerbotts.com
10 Email: erik.koons@bakerbotts.com

11 *Attorneys for Defendants Koninklijke Philips, N.V.,*
12 *Philips North America Corporation, Philips*
13 *Taiwan Limited, and Philips do Brasil, Ltda*

14 /s/ Kathy L. Osborn

15 FAEGRE BAKER DANIELS LLP
16 KATHY L. OSBORN
17 Email: kathy.osborn@FaegreBD.com
18 300 N. Meridian Street, Suite 2700
19 Indianapolis, IN 46204
20 Telephone: (317) 237-0300
21 Facsimile: (317) 237-1000

22 JEFFREY S. ROBERTS
23 Email: jeff.roberts@FaegreBD.com
24 3200 Wells Fargo Center
25 1700 Lincoln Street
26 Denver, CO 80203
27 Telephone: (303) 607-3500
Facsimile: (303) 607-3600

Attorneys for Defendants Thomson SA and
Thomson Consumer Electronics, Inc.

/s/ Donald A. Wall

SQUIRE PATTON BOGGS (US) LLC

DONALD A. WALL

Email: donald.wall@squirepb.com

1 East Washington Street, Suite 2700

Phoenix, AZ 85004

Telephone: (602) 528-4005

Facsimile: (602) 253-8129

Attorneys for Defendants Technologies

Display Americas LLC

/s/ Eliot A. Adelson

KIRKLAND & ELLIS LLP

ELIOT A. ADELSON

Email: eadelson@kirkland.com

555 California Street, 27th Floor

San Francisco, CA 94104

Telephone: (415) 439-1413

Facsimile: (415) 439-1500

*Attorneys for Defendants Hitachi Ltd., Hitachi
Displays, Ltd. (n/k/a Japan Display, Inc.), Hitachi
Asia, Ltd., Hitachi America, Ltd., and Hitachi
Electronic Devices (USA), Inc.*

/s/ Christopher M. Curran

WHITE & CASE LLP

CHRISTOPHER M. CURRAN

ccurran@whitecase.com

LUCIUS B. LAU

alau@whitecase.com

DANA E. FOSTER

defoster@whitecase.com

701 Thirteenth Street, N.W.

Washington, DC 20005

tel.: (202) 626-3600

fax: (202) 639-9355

*Attorneys for Defendants Toshiba Corporation,
Toshiba America, Inc., Toshiba America
Information Systems, Inc., Toshiba America
Consumer Products, L.L.C., and Toshiba America
Electronic Components, Inc.*

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

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This document relates to:

**[PROPOSED] ORDER VACATING 2010
STIPULATION AND ORDER**

ALL INDIRECT PURCHASER ACTIONS

Having reviewed the Motion to Vacate or Clarify the 2010 Stipulation and Order Modifying and Adopting Special Master's Report, Recommendations and Tentative Rulings Regarding Defendants' Joint Motion to Dismiss the Second Amended Complaint of the Indirect Purchaser Plaintiffs (the "2010 Stipulation and Order") (ECF No. 799), and papers filed in connection therewith, and having heard argument, and finding good cause, the Court hereby **GRANTS** the Motion as follows:

1. Paragraph 5 of the 2010 Stipulation and Order is vacated prospectively.
2. Except as provided in Paragraph 1 above, the 2010 Stipulation and Order is undisturbed. Without prejudice to the generality of the foregoing sentence, the Court does not vacate (a) Paragraphs 1-4 of the 2010 Stipulation and Order, or (b) Paragraph 5 of the 2010 Stipulation and Order to the extent it authorized the filing of a Third Amended Complaint.

Honorable Jon S. Tigar
United States District Judge

Dated: